



WISCONSIN LEGISLATIVE COUNCIL RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 08-064

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated January 2005.]

2. Form, Style and Placement in Administrative Code

- a. In s. Ins 6.79 (1), “this rule” should be changed to “this section.” [See s. 1.07 (1) (a), Manual.]
- b. Section Ins 6.79 (2) provides that: “It shall be the duty of each council or committee to advise....” This should be restructured as a mandatory action as follows: “Each council or committee shall advise....” [See s. 1.01 (2), Manual.]
- c. In s. Ins 6.79 (5), “shall not exceed” should be changed to “may not exceed.” [s. 1.01 (2), Manual.]
- d. In SECTION 4, “These changes will” should be changed to “This rule shall.” [s. 1.02 (4) (a), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

- a. In item 2. of the analysis, s. 227.13, Stats., could also be cited as providing statutory authority since s. Ins 6.79 (1) refers to s. 227.13, Stats.
- b. SECTION 3 cites various statutes under which “this section” may be enforced. It is not clear what “section” is being referred to. If it refers to s. Ins 6.79, it does not appear that anything will be enforced under that section. If it refers only to SECTION 3, there is nothing to enforce. It does not appear that SECTION 3 is necessary.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. Item 3. of the analysis is grammatically incorrect as the subject of the phrase “permits the OCI” is the phrase “The OCI” at the beginning of the sentence. Also, it appears that one of the references in that sentence to “create” and “creation” should be eliminated.

b. Several items in the analysis refer to “OCI”; the first sentence of Item 5. and Item 8. of the analysis refer to “the Office”; the last sentence of item 5. of the analysis refers to “the agency.” Since these are all referring to the same entity, one term should be selected and used consistently to avoid confusion.

c. Item 5. of the analysis indicates that s. Ins 8.10 is being repealed because “that council” no longer functions. The analysis should specify the name of the council being referred to, namely, the advisory council on employee welfare plans.

d. Section Ins 6.79 sometimes refers to the “commissioner” and sometimes refers to the “commissioner of insurance.” It would be useful to define the term “commissioner” and then refer consistently to it.

e. Section Ins 6.79 (1) indicates that the purpose of the rule is to “create advisory councils and committees.” However (and in contrast to current s. Ins 6.79), s. Ins 6.79 does not do so. Rather, s. Ins 6.79 sets forth the process by which the commissioner may create a council or committee. This should be clarified.

f. A period should be inserted at the end of s. Ins 6.79 (2).

g. Section Ins 6.79 (4) indicates that the councils or committees “shall meet as needed and at such times as requested by the commissioner.” This is confusing. First, it is not clear if two circumstances are being described (namely, “as needed” and also whenever the commissioner requests) or only one circumstance.

If two circumstances are being described, the rule does not specify who determines if a meeting is needed (for example, the chairperson or a specified number of committee or council members or the commissioner). Also, it is not clear who the commissioner makes the “request” to and whether that entity may decline the request.

On the other hand, if only one circumstance is intended, namely on the call of the commissioner, then this should be explicitly stated.

h. The last sentence of s. 15.09 (1), Stats., provides that if a council is being created under the general authority of s. 15.04 (1) (c), Stats. (which s. 601.20, Stats., and s. Ins 6.79 (1) specify is the case), then the chief executive officer of the independent agency (the commissioner of insurance (commissioner) in this case) is required to designate an employee of the independent agency (the office of the commissioner of insurance (OCI) in this case) as the secretary of the council and the secretary must be a **voting** member of the council.

In contrast, s. Ins 6.79 (6) provides that the commissioner must appoint an employee of OCI as a **non-voting** member of a council and further provides that the commissioner or a

designee must keep a record of all proceedings, transactions, communications, and other official acts of a council.

If the OCI employee referred to in s. Ins 6.79 (6) as the person appointed to assist a council is the secretary of the council, then the OCI employee must be a voting member of the council, instead of a non-voting member as provided in s. Ins 6.79 (6).

However, if this OCI employee is not the secretary of a council, it appears that s. 15.09 (2), Stats., would require an additional employee of OCI to serve as the secretary and be a voting member. (Incidentally, in the latter case, it appears that both employees would be members of the council for purposes of constituting a quorum under s. 15.09 (4), Stats.) Is this the intended result?

Also, s. 15.09 (2), Stats., provides that, unless otherwise provided by law, every council must elect a chairperson and vice chairperson from among its members at the first meeting in each year. Section Ins 6.79 (6) otherwise provides by law with respect to appointing a chairperson of a council. However, s. Ins 6.79 (6) does not otherwise provide by law with respect to a vice chairperson. That means that for a council, s. 15.09 (2), Stats., will control how a vice chairperson is appointed. Is that the intended result?

Although entitled "OFFICERS," s. Ins 6.79 (6) does not refer to any officer other than a chair. Consideration could be given to changing the title to more accurately reflect the contents of the subsection (or the content of the subsection could be revised).